IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7983 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FIROZ ABDUL KADIR PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7983 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Surat city on 18.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and served upon the petitioner reveal that the detaining authority took into consideration the material on two aspects, firstly, registration of crime against the petitioner on 27.3.2003 under sec. 66(1)(B), 65E, 81 and 116B of the Bombay Prohibition Act and secondly in-camera statements of the witnesses recorded by the proposing authority on 6.4.2003 and 7.4.2003 and verified by the detaining authority on 16.4.2003 revealing the incidents of 26.1.2003 and 16.2.2003. From the above material, the order came to be passed which is impugned in this petition.

Ld. advocate Mr HR Prajapati for the petitioner and ld. AGP Ms. Mita Panchal for the respondents were heard at length. Affidavit in reply is filed by the detaining authority as placed on record by Ld.AGP is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that this matter can be disposed of on the ground whether the subjective satisfaction of the detaining authority was vitiated with respect to the activities of the detenu prejudicial to the maintenance of public order. Ld. AGP relying upon a decision in the matter of Kanuji S. Zala vs. State of Gujarat and ors., as reported in 1999(2) GLH p. 415 and the decision of the Apex Court in the matter of Amanullakhan Kudeatallakhan Pathan vs. State of Gujarat and ors., as reported in (1999)5 SCC p. 613, contended that the solitary offence registered against the petitioner may constitute habitual tendency to repeat the activities and since the public order was disturbed as held by the Apex court in the matter of Kanuji S. Zala (supra), the order is not required to be quashed on that ground.

From the rival contentions and going through the record, law as established today, is, habitual tendency to repeat the activity may be inferred even from solitary offence registered and may not be inferred from many cases registered against a person. Threat of continuity of activity which may be objectionable always depends upon the facts and circumstances of the case. Now, reverting to the facts of the case when we advert to the

FIR filed by concerned police officer in solitary case registered against the petitioner, it is clear that the petitioner was travelling in Maruti car and on intercepting such car by police which was driven by a Driver, foreign liquor containing in 1056 bottles were found and, therefore, the offence came to be registered against the petitioner. The said crime is a pending trial before the competent court. From this very facts, one cannot come to a reasonable conclusion that the petitioner has habitual tendency to repeat such continuity of objectional activity which would be required to be prevented forthwith by the aid of detention law. While going through the statements recorded in-camera, it is clear that in one incident, the witness was forced to transport illegal liquor in his car and on refusal, he was beaten by the petitioner and his associates. In the second incident, on suspicion that the witness was informing the police, the witness was beaten by the petitioner and his associates. If the statements are taken on their face value, the statements neither reveal such habitual tendency on the part of the petitioner to continue illegal activities which could only and only be taken care under the detention law nor it is revealed that the public order was disturbed on account of the activity of the petitioner. It is the degree and extent of the reach of the objectional activity upon the society which is vital aspect for consideration when a question arises as to whether a man committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order. It is the potentiality of the act to disturb even tempo of life of the community which makes it prejudicial to the maintenance of public order. The bootlegging activities even coupled with the violence would not by itself amounts to the activities prejudicial to the public order only because 1056 bottles are recovered from the Maruti Car in which the petitioner was travelling would not lead to the conclusion reasonably that thereby any public order is disturbed or public health was affected. The facts before the Apex Court in a case of Kanuji S. Zala (supra) is different from the facts of this case which is evident from the observation made by the Apex Court in para-5 and 6 of the above said judgment. In this view of the matter, in this case, the material is wanting to come to a reasonable conclusion that by the alleged activity of the detenu, the public order was disturbed. Hence, the order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil

application passed on 18.4.2003 by the Police Commissioner, Surat city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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